

PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

Resolution ALJ 176-3076
Administrative Law Judge Division
November 29, 2001

R E S O L U T I O N

RESOLUTION ALJ 176-3076. Ratification of preliminary determinations of category for proceedings initiated by application. The preliminary determinations are pursuant to Article 2.5, Rules 4, and 6.1 of the Commission's Rules of Practice and Procedure. (See also Rule 63.2(c) regarding notice of assignment.)

The Commission's rules and procedures which implement the requirements of Senate Bill (SB) 960 (Leonard, ch. 96-0856) are, for the most part, found in Article 2.5 of our Rules of Practice and Procedure. The rules and procedures were adopted by the Commission in D.97-11-021, which describes more fully the background to the development of these rules. Rule 4 describes the formal proceedings to which the SB 960 rules (Article 2.5) apply. Rule 6.1 requires the Commission to preliminarily determine a proceeding's category, whether the proceeding requires a hearing, and designate an Assigned Commissioner and Administrative Law Judge. Rule 6.1(a) states that the preliminary determination of category is not appealable but shall be confirmed or changed by Assigned Commissioner's ruling. Unless and until a preliminary determination is changed by such ruling, the preliminary determination of category governs the applicability of the other reforms that SB 960 requires. Rule 63.2 provides for petitioning the Commission to reassign a proceeding to another administrative law judge. Rule 63.2(c) establishes the time for filing such a petition. For purposes of Rule 63.2(c), notice of the assignment is the day the assignments associated with this preliminary categorization document appear in the Daily Calendar following the Commission business meeting.

The Categories

SB 960 makes sweeping changes in many aspects of the Commission's practices in an effort to improve the quality and timeliness of Commission decision making. It creates three categories of proceedings: adjudicatory, ratesetting, and quasi-legislative. The

applicability of many of the changes it requires depends upon the category assigned to the proceeding. For example, the ex parte rules which apply differ if the proceeding is categorized as adjudicatory rather than quasi-legislative. The Legislature defined each of these procedural categories in Section 7 of SB 960. Consistent with these definitions, the rules provide that:

“‘Adjudicatory’ proceedings are: (1) enforcement investigations into possible violations of any provision of statutory law or order or rule of the Commission; and (2) complaints against regulated entities, including those complaints that challenge the accuracy of a bill, but excluding those complaints that challenge the reasonableness of rates or charges, past, present, or future.

“‘Ratesetting’ proceedings are proceedings in which the Commission sets or investigates rates for a specifically named utility (or utilities), or establishes a mechanism that in turn sets the rates for a specifically named utility (or utilities). ‘Ratesetting’ proceedings include complaints that challenge the reasonableness of rates or charges, past, present, or future. For purposes of this Article, other proceedings may be categorized as ratesetting as described in Rule 6.1(c).

“‘Quasi-legislative’ proceedings are proceedings that establish policy or rules (including generic ratemaking policy or rules) affecting a class of regulated entities, including those proceedings in which the Commission investigates rates or practices for an entire regulated industry or class of entities within the industry.” (Rules 5(b), 5(c), and 5(d).)

Mixed or Unclear Category Proceedings

For a proceeding that may fall into more than one category, the rules allow parties to recommend that the Commission pick the most suitable category, or to recommend dividing the subject matter of the proceeding into different phases or one or more new proceedings, each with its own category. The rules provide that a proceeding that does not clearly fit into *any* of SB 960’s defined categories will be conducted under the rules applicable to the ratesetting category. As such a proceeding matures, the Commission may determine that the rules applicable to one of the other categories, or some hybrid of those rules, would be better suited to the proceeding.

As stated in D.97-06-071, ratesetting proceedings typically involve a mix of policymaking and factfinding relating to a particular public utility. Because proceedings that do not clearly fall within the adjudicatory or quasi-legislative categories likewise typically involve a mix of policymaking and factfinding, the ratesetting procedures are, in general, preferable for those proceedings.

ALJ/hkr

Next Steps

As stated above, this preliminary determination of category is not appealable. Once interested parties have had an opportunity to respond to the initiating party's proposed category, the preliminary determination shall be confirmed or changed by Assigned Commissioner's Ruling pursuant to Rule 6(a)(3). This Assigned Commissioner Ruling may be appealed to the full Commission pursuant to Rule 6.4(a). Parties have 10 days after the ruling is mailed to appeal. Responses to the appeal are allowed under Rule 6.4(b), and must be filed and served not later than 15 days after the ruling is mailed. The full Commission will consider the appeal.

Any party, or person or entity declaring an intention to become a party is entitled to petition for reassignment of the proceeding to another Administrative Law Judge, as described in Rule 63.2. Such a petition must be filed no later than 10 days after notice of the assignment. For purposes of Rule 63.2(c), notice of the assignment is the day the assignments associated with this preliminary categorization document appear in the Daily Calendar following the Commission business meeting.

Conclusion

The Commission has reviewed the initial pleading of the utility applicants listed in the attached schedule and has made a preliminary determination of category and need for hearing, consistent with the requirements and definitions of Article 2.5 of its rules.

IT IS ORDERED that each proceeding listed in the attached schedule is preliminarily categorized, and the need for a hearing is noted.

ALJ/hkr

I certify that the foregoing resolution was duly introduced, passed, and adopted at a conference of the Public Utilities Commission of the State of California held on November 29, 2001, the following Commissioners voting favorably thereon:

/s/ WESLEY M. FRANKLIN

WESLEY M. FRANKLIN
Executive Director

LORETTA M. LYNCH
President

HENRY M. DUQUE
RICHARD A. BILAS
CARL W. WOOD
GEOFFREY F. BROWN
Commissioners

PRELIMINARY DETERMINATION SCHEDULE

Resolution ALJ 176-3076 (11/29/01)

NUMBER TITLE	PROPOSED CATEGORY	PRELIM. CATEGORY	HEARING
A01-10-011 PACIFIC GAS AND ELECTRIC COMPANY, (U 39 G) Proposing a Market Structure and Rules for the Northern California Natural Gas Industry for the Period Beginning January 1, 2003 as Required by Commission Decision 01- 09-016	Quasi- legislative	Ratesetting	YES
A01-10-037 PLUMAS-SIERRA RURAL ELECTRIC COOPERATIVE, to Amend its Certificate of Public Convenience and Necessity to Alter and Extend its Service Territory	Ratesetting	Ratesetting	NO
A01-10-040 SPRINT COMMUNICATIONS COMPANY, L.P., (U-5112-C), to Withdraw the Provision of Sprint ION Services and to Transfer California Sprint ION Customers' Local Service	Ratesetting	Ratesetting	NO
A01-10-041 PACIFIC GAS AND ELECTRIC COMPANY, for Approval Under Section 851 for Easement from PG&E Allowing CPN Pipeline to Install and Maintain Two Underground Gas Pipelines and for Related Access	Ratesetting	Ratesetting	NO
A01-10-046 SAN DIEGO GAS & ELECTRIC COMPANY, (U 902-E), for Authority to Sell Certain Real Property in San Diego, California to Lankford & Associates, Inc., general partner of Broadway Tower 655, LLC	Ratesetting	Ratesetting	NO
A01-10-047 CITY OF OXNARD, for Authorization to construct Camino Del Sol, a public Street, across the railroad tracks of the Union Pacific Railroad Company in the City of Oxnard, County of Ventura	Ratesetting	Ratesetting	NO
A01-11-003 SAN DIEGO GAS & ELECTRIC COMPANY, (U 902-E) Proposing Lump-Sum Payment and Periodic Payment Options for Departing Load Customers	Ratesetting	Ratesetting	YES
A01-11-004 SAN DIEGO GAS & ELECTRIC COMPANY, (U 902-E) for Authority to Make Various Electric Rate Design Changes, Close Certain Rates, and Revise Cost Allocation Among Customer Classes effective August 1, 2002	Ratesetting	Ratesetting	YES

PRELIMINARY DETERMINATION SCHEDULE

Resolution ALJ 176-3076 (11/29/01)

NUMBER TITLE	PROPOSED CATEGORY	PRELIM. CATEGORY	HEARING
A01-11-005 TREX COMMUNICATIONS, INC., for Registration as an Interexchange Carrier Telephone Corporation pursuant to the provisions of Public Utilities Code Section 1013	NDIEC Registration Application	Ratesetting	NO
A01-11-007 CATALINA EXPLORER CO., INC., to amend its certificate of public convenience and necessity and to extend its operating authority to include scheduled service for the transportation of persons and baggage between Long Beach on the one hand and all points and places on Santa Catalina Island on the other hand	Ratesetting	Ratesetting	NO
A01-11-009 CALIFORNIA AIRBUS INC., for authority to operate as a scheduled passenger stage corporation between points in Chino, City of Industry, El Monte, Los Angeles International Airport and Ontario International Airport and to establish a zone of rate freedom	Ratesetting	Ratesetting	NO
A01-11-011 SAMSUNG UNITEL AMERICA, INC., for Registration as an Interexchange Carrier Telephone Corporation pursuant to the provisions of Public Utilities Code Section 1013	NDIEC Registration Application	Ratesetting	NO
A01-11-012 Q LINK COMMUNICATIONS, INC., for Registration as an Interexchange Carrier Telephone Corporation pursuant to the provisions of Public Utilities Code Section 1013	NDIEC Registration Application	Ratesetting	NO
A01-11-013 BUREAU 21, INC., for Registration as an Interexchange Carrier Telephone Corporation pursuant to the provisions of Public Utilities Code Section 1013	NDIEC Registration Application	Ratesetting	NO
A01-11-014 VERIZON ADVANCED DATA INC., (U 6454-C), to Transfer Intrastate Advanced Data Services Assets and California Customer Base, Withdraw Service and Cancel its CPCN	Ratesetting	Ratesetting	NO
A01-11-015 UTILITY TELEPHONE, INC., (U 5807-C), for Registration as an Interexchange Carrier Telephone Corporation pursuant to the provisions of Public Utilities Code Section 1013	NDIEC Registration Application	Ratesetting	NO

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Resolution ALJ 176-3076 (11/29/01)

NUMBER TITLE	PROPOSED CATEGORY	PRELIM. CATEGORY	HEARING
A01-11-016 PACIFIC GAS AND ELECTRIC COMPANY, (U 39-M) for Expedited Approval Under Section 851 for an Easement from PG&E allowing Elk Hills Power Project to install and maintain Electric Transmission Generation Tie Line Facilities on or over PG&E Utility Property and for related access	Ratesetting	Ratesetting	YES
A01-11-017 DSLNET COMMUNICATIONS, L.L.C., VANTAGEPOINT VENTURE PARTNERS, for Approval of the Indirect Transfer of Control of DSLnet Communications, L.L.C. (U 6191 C) to VantagePoint Venture Partners	Ratesetting	Ratesetting	NO
A01-11-019 ALLEY FAMILY TRUST (EAST PLANO WATER COMPANY), WATERTEK, INC., Joint; for the following orders: (1) Authorizing the Alley Family Trust to sell and transfer to Watertec, Inc., ownership of certain assets of East Plano Water Company; and (2) Authorizing East Plano Water Company to withdraw from the water utility business; and (3) Authorizing Watertec, Inc. to engage in and carry on the water utility service to the customers of East Plano Water Company	Ratesetting	Ratesetting	NO
A01-11-020 ENHANCED COMMUNICATIONS NETWORK, INC., PACIFIC TELECOM, INC., for Authority to Transfer Control of Enhanced Communications Network, Inc. to Pacific Telecom, Inc.	Ratesetting	Ratesetting	NO
A01-11-021 CITY OF LOS ANGELES (HARBOR DEPARTMENT), for an order authorizing a grade separated crossing of Ocean Boulevard through the City of Long Beach right-of- way, and an at-grade crossing of Reeves Avenue through the City of Long Beach/City of Los Angeles right-of-way, both located near the center of Terminal Island	Ratesetting	Ratesetting	NO
A01-11-023 PACIFIC GAS AND ELECTRIC COMPANY (U39 M), for Expedited Approval under Public Utilities Code Section 851 for an Easement from PG&E allowing Placer County Water Agency to Install and Maintain Water System Facilities on PG&E Utility Property and for Related Access	Ratesetting	Ratesetting	NO

PRELIMINARY DETERMINATION SCHEDULE

Resolution ALJ 176-3076 (11/29/01)

NUMBER TITLE	PROPOSED CATEGORY	PRELIM. CATEGORY	HEARING
A01-11-024 TELIGENT SERVICES, INC., for Emergency Authority to Discontinue the Provision of Local Exchange Service	Ratesetting	Ratesetting	NO
A01-11-025 CIERA NETWORK SYSTEMS, INC. (U 6208 C), for authority to extend its Certificate of Public Convenience and Necessity to include Facilities-Based Local Exchange Services within the State of California	Ratesetting	Ratesetting	NO
A01-11-030 CITY OF POINT ARENA, for Rehearing of Resolution W-4308	*	*	*
A01-11-031 CITY OF LIVERMORE, for Authority to provide an at grade access crossing over the Union Pacific Railroad Company tracks for periodic maintenance to facilities and/or emergency repair work by Zone 7 Water Agency, Pacific Gas and Electric Company and the City of Livermore Maintenance Department in the City of Livermore, County of Alameda	Ratesetting	Ratesetting	NO
A01-11-032 LEGENT COMMUNICATIONS CORPORATION, dba LONG DISTANCE AMERICA, for Registration as an Interexchange Carrier Telephone Corporation pursuant to the provisions of Public Utilities Code Section 1013	NDIEC Registration Application	Ratesetting	NO
A01-11-034 MAYACAMA GOLF CLUB, LLC, for a Certificate of Public Convenience and Necessity in order to Provide Public Utility Sewer Services solely to the Mayacama Golf Club located within the County of Sonoma	Ratesetting	Ratesetting	NO
A01-11-035 MINI-BUS SYSTEM, INC., dba SUPERSHUTTLE SAN GABRIEL, to Extend its Passenger Stage Authority (PSC-8016) to include San Diego Airport and certain additional points in San Diego County	Ratesetting	Ratesetting	NO

*Application for Rehearing of Resolution is assigned to Legal Division. Categorization/Need for Hearing will be addressed as necessary if the Commission subsequently grants rehearing.